

HOUSE BILL 1866

By McManus

AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 7; Title 39 and Title 40, relative to a registry for arson offenders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 21, is amended by adding the following as a new part:

40-21-101. As used in this part:

(1) "Arson offender" means a person who has been convicted in this state of committing an arson-related offense or has another qualifying conviction;

(2) "Arson-related offense" means the commission of any act that, on or after the effective date of this bill, constitutes the criminal offense of:

(A) Arson, under § 39-14-301 or § 39-14-303;

(B) Aggravated arson, under § 39-14-302;

(C) Attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (2);

(D) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (2);

(E) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (2);

(F) Criminal responsibility, under § 39-11-402(2), to commit any of the offenses enumerated in this subdivision (2);

(G) Facilitating the commission, under § 39-11-403, to commit any of the offenses enumerated in this subdivision (2); or

(H) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (2);

(3) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. "Conviction" includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere or a finding of guilt by a jury or the court in any other state of the United States, other jurisdiction or other country. A conviction, whether upon a plea of guilty, a plea of nolo contendere or a finding of guilt by a jury or the court for an offense committed in another jurisdiction that would be classified as an arson-related offense if committed in this state shall be considered a conviction for the purposes of this part. "Convictions," for the purposes of this part, also include a plea taken in conjunction with § 40-35-313 or its equivalent in any other jurisdiction;

(4) "Designated law enforcement agency" means the law enforcement agency that has jurisdiction over the entire geographic area of the county where the arson offender's primary residence is located;

(5) "Primary residence" means a place where the person abides, lodges, resides or establishes any other living accommodations in this state for five (5) consecutive days;

(6) "Register" means the initial registration of an arson offender;

(7) "Registering agency" means a sheriff's office or metropolitan police department;

(8) "Report" means appearance before the proper designated law enforcement agency for any of the purposes set out in this part;

(9) "Resident" means any person who abides, lodges, resides or establishes any other living accommodations in this state, including establishing a physical presence in this state;

(10) "TAR" means the Tennessee arsonist registry required by § 40-21-105(a);

(11) "TBI" means the Tennessee bureau of investigation;

(12) "TBI registration form" means the Tennessee arson offender registration form; and

(13) "TDOC" means the Tennessee department of correction.

40-21-102.

(a)

(1) Within ten (10) days of establishing or changing a primary residence in this state, the arson offender shall register or report in person, as required by this part. Likewise, within ten (10) days of release on probation or any alternative to incarceration, excluding parole, the arson offender shall register or report in person, as required by this part.

(2) Regardless of an offender's date of conviction, adjudication or discharge from supervision, an arson offender whose contact with this state is sufficient to satisfy the requirements of subdivision (a)(1) is required to register in person as required by this part, if the person was required to register as any form of arson offender in another jurisdiction prior to the arson offender's presence in this state.

(3) An arson offender who resides and is registered in this state and who intends to move out of this state shall, within ten (10) days after moving to another state or within ten (10) days of becoming reasonably

certain of the intention to move to another state, register or report to the arson offender's designated law enforcement agency the address at which the arson offender will reside in the new jurisdiction.

(4) Within ten (10) days of a change in any other information given to the registering agency by the arson offender that is contained on the registration form, the arson offender must report the change to the registering agency.

(5) Within ten (10) days of being released from probation or parole, an arson offender must report to the designated law enforcement agency, which shall then become the registering agency.

(b) An arson offender who is incarcerated in this state in a local, state or federal jail or a private penal institution shall, within ten (10) days after the arson offender's release from the incarcerating institution, report in person to the arson offender's registering agency.

(c) An arson offender from another state, jurisdiction or country who has established a primary residence within this state shall, within ten (10) days of establishing residency, register or report in person with the designated law enforcement agency.

(d) Arson offenders who do not maintain a primary residence, as defined in this part, shall be considered homeless and are subject to the registration requirements of this part. Arson offenders who do not maintain a primary residence shall be required to report to their registering agency monthly for so long as they do not maintain either a primary or secondary residence.

(e) An arson offender who indicates to a designated law enforcement agency on the TBI registration form the arson offender's intent to reside in

another state, jurisdiction or country and who then decides to remain in this state shall, within ten (10) days of the decision to remain in the state, report in person to the designated law enforcement agency and update all information pursuant to subsection (f).

(f) Each arson offender who is required to register shall complete and sign a TBI registration form. TBI registration forms shall require the registrant's signature and disclosure of the following information, under penalty of perjury, pursuant to § 39-16-702(b)(4):

(1) Complete name and all aliases, including, but not limited to, any names that the arson offender may have had or currently has by reason of marriage or otherwise, including pseudonyms and ethnic or tribal names;

(2) Date and place of birth;

(3) Social security number;

(4) A photocopy of a valid driver license, or if no valid driver license has been issued to the arson offender, a photocopy of any state or federal government issued identification card;

(5) For an arson offender on supervised release, the name, address and telephone number of the registrant's probation or parole officer or other person responsible for the registrant's supervision;

(6) Arson-related offenses for which the registrant has been convicted, the date of the offenses and the county and state of each conviction;

(7) Name of any current employers and length of employment, including physical addresses and phone numbers;

(8) Current physical address and length of residence at that address, which shall include any primary residence. For the purpose of this section, a post office box number shall not be considered an address;

(9) Mailing address, if different from physical address;

(10) Any vehicle, mobile home, trailer or manufactured home used or owned by an arson offender, including descriptions, vehicle information numbers and license tag numbers;

(11) Any vessel, live-aboard vessel or houseboat used by an arson offender, including the name of the vessel, description and all identifying numbers;

(12) Name and address of each institution of higher education in this state where the arson offender is employed or practices a vocation or is a student;

(13) Race and gender;

(14) Name, address and phone number of arson offender's closest living relative;

(15)

(A) Any other registration and verification information, including fingerprints and a current photograph of the arson offender, vehicles and vessels, as referred to in subdivisions (f)(10) and (11), as may be required by rules promulgated by the TBI, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(B) By January 1, 2015, the TBI shall promulgate and disseminate to all applicable law enforcement agencies, rules

establishing standardized specifications for the photograph of the arson offender required by subdivision (f)(15)(A). The rules shall specify that the photograph or digital image submitted for each arson offender must conform to the same compositional specifications as those that apply to photographs used in the sexual offender registry under § 40-39-203(i)(19)(B);

(16) Copies of all passports and immigration documents; and

(17) Professional licensing information that authorizes an arson offender to engage in an occupation or carry out a trade or business.

(g) No later than the third day after an arson offender's initial registration, the registering agency shall send by the United States postal service the original signed TBI registration form containing information required by subsection (f) to TBI headquarters in Nashville.

(h) The arson offender's signature on the TBI registration form creates the presumption that the arson offender has knowledge of the registration and verification requirements of this part.

(i) An arson offender who is housed in a halfway house or any other facility as an alternative to incarceration where unsupervised contact is permitted outside of the facility is required to register or report with the registering agency as set out in this part in the city or county of the facility in which the arson offender is housed.

40-21-103.

(a) Once a year, all arson offenders shall report in person, no earlier than seven (7) calendar days before and no later than seven (7) calendar days after the arson offender's date of birth, to the designated law enforcement agency to

update the arson offender's fingerprints, palm prints and photograph, as determined necessary by the agency, to verify the continued accuracy of the information in the TBI registration form and to pay the specified administrative costs, not to exceed one hundred fifty dollars (\$150), one hundred dollars (\$100) of which shall be retained by the designated law enforcement agency to be used for the purchase of equipment, to defray personnel and maintenance costs and any other expenses incurred as a result of the implementation of this part. The remaining fifty dollars (\$50.00) shall be submitted by the registering agency to the TBI for maintenance, upkeep and employment costs, as well as any other expenses incurred as a result of the implementation of this part. Arson offenders whose initial registration occurs after the annual reporting period shall be required to pay the administrative costs at the time of the initial registration. Arson offenders who reside in nursing homes and assisted living facilities and arson offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities are exempt from the in-person reporting and fingerprinting and administrative cost as otherwise provided by this part. However, if an arson offender is released or discharged from a nursing home, assisted living facility or mental health institution or is no longer continuously confined to home or a health care facility due to mental or physical disabilities, the arson offender shall, within ten (10) days, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(4). If the arson offender has previously registered prior to the release or discharge, the arson offender shall, within ten (10) days, report in person to the

designated law enforcement agency and update all information pursuant to this section.

(b) Within three (3) days after the arson offender's verification, the designated law enforcement agency with whom the arson offender verified shall send by United States postal service the original signed TBI registration form containing information required by § 40-21-102(f) to TBI headquarters in Nashville. The TBI shall be the state central repository for all original TBI registration forms and any other forms required by this part that are deemed necessary for the enforcement of this part. The designated law enforcement agency shall retain a duplicate copy of the TBI registration form as a part of the business records for that agency.

(c) If a person required to register under this part is reincarcerated for another offense or as the result of having violated the terms of probation, parole, conditional discharge or any other form of alternative sentencing, the arson offender shall immediately report the arson offender's status as an arson offender to the facility where the arson offender is incarcerated or detained and notify the arson offender's appropriate registering agency, if different, that the arson offender is currently being detained or incarcerated. Registration and verification requirements for such persons are tolled during the subsequent incarceration. Within ten (10) days of the release from any subsequent re-incarcerations, the arson offender shall register with the appropriate designated law enforcement agency. Likewise, if a person who is required to register under this part is deported from this country, the registration and verification requirements for such persons are tolled during the period of deportation. Within ten (10) days of the

return to this state after deportation, the arson offender shall register with the appropriate designated law enforcement agency.

40-21-104.

(a) TBI registration forms shall be designed, printed and distributed by and at the expense of the TBI. These forms shall include instructions for compliance with this part and a statement of understanding and acknowledgment of those instructions to be signed by the arson offender. TBI registration forms shall be available from registering agencies.

(b) It shall be the duty of the arson offender's designated registering agency, its representatives and designees, including any district attorney general's criminal investigator, to verify the accuracy and completeness of all information contained in the arson offender's TBI registration form.

(c) The officer or employee responsible for supervising an arson offender who has been released on probation, parole or any other alternative to incarceration shall promptly obtain the arson offender's signed statement acknowledging that the named officer or employee has fully explained, and the arson offender understands, the registration and verification requirements and sanctions of this part.

(d) Not more than forty-eight (48) hours prior to the release of an arson offender from incarceration, with or without supervision, the warden of the correctional facility or the warden's designee, or sheriff of the jail or the sheriff's designee, shall obtain the arson offender's signed statement acknowledging that the official has fully explained, and the arson offender understands, the registration and verification requirements and sanctions of this part.

(e) If the arson offender is placed on unsupervised probation, the court shall fully explain to the arson offender, on the court record, the registration and verification requirements and sanctions of this part. The court shall then order the arson offender to report within ten (10) days, in person, to the appropriate registering agency to register as required by this part.

(f) Through press releases, public service announcements or through other appropriate public information activities, the TBI shall attempt to ensure that all arson offenders, including those who move into this state, are informed and periodically reminded of the registration and verification requirements and sanctions of this part.

40-21-105.

(a) Using information received or collected pursuant to this part, the TBI shall establish, maintain and update a centralized record system of arson offender registration and verification information. The TBI may receive information from any credible source and may forward the information to the appropriate law enforcement agency for investigation and verification.

(b) Whenever there is a factual basis to believe that an arson offender has not complied with the provisions of this part, the TBI shall make the information available through the TAR to the district attorney general and the designated law enforcement agency having responsibility for the arson offender's supervised release.

(c) Notwithstanding any law to the contrary, officers and employees of the TBI and local law enforcement shall be immune from liability relative to their good faith actions, omissions and conduct pursuant to this part.

(d) The information contained in the TAR shall be made available to law enforcement agencies but shall not be a public record unless specifically authorized by the laws of this state.

(e) The TBI has the authority to promulgate any necessary rules to implement and administer this section. These rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

40-21-106.

(a) It is an offense for an arson offender to knowingly violate any provision of this part. Violations shall include, but not be limited to:

- (1) Failure of an arson offender to timely register or report;
- (2) Falsification of a TBI registration form;
- (3) Failure to timely disclose required information to the designated law enforcement agency;
- (4) Failure to sign a TBI registration form;
- (5) Failure to pay the annual administrative costs, if financially able;
- (6) Failure to timely disclose status as an arson offender to the designated law enforcement agency upon re-incarceration;
- (7) Failure to timely report to the designated law enforcement agency upon release after re-incarceration;
- (8) Failure to timely report to the designated law enforcement agency following reentry in this state after deportation; and
- (9) Failure to timely report to the arson offender's designated law enforcement agency when the arson offender moves to another state.

(b) A violation of this part is a Class E felony. No person violating this part shall be eligible for suspension of sentence, diversion or probation until the minimum sentence is served in its entirety.

(c) The first violation of this part is punishable by a fine of not less than three hundred fifty dollars (\$350) and imprisonment for not less than ninety (90) days.

(d) A second violation of this part is punishable by a fine of not less than six hundred dollars (\$600) and imprisonment for not less than one hundred eighty (180) days.

(e) A third or subsequent violation of this part is punishable by a fine of not less than one thousand one hundred dollars (\$1,100) and imprisonment for not less than one (1) year.

(f) A violation of this part is a continuing offense. If an arson offender is required to register pursuant to this part, venue lies in any county in which the arson offender may be found or in any county where the violation occurred.

40-21-107.

(a) Except as otherwise provided in subsection (b), no record shall be removed from the SOR, unless ordered by a court of competent jurisdiction as part of an expunction order pursuant to § 40-32-101, so long as the offense is eligible for expunction under § 40-32-101.

(b) Upon receipt of notice of the death of a registered arson offender, verified through the registering agency or TBI officials by obtaining a copy of the arson offender's certificate of death, by checking the social security death index or by obtaining a copy of an accident report, the TBI shall remove all data pertaining to the deceased arson offender from the TAR.

40-21-108.

(a) Upon the court's acceptance of a defendant's entry of a plea of guilty or a finding of guilt by a jury or judge after trial, and, notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant who establishes a primary residence in this state and who enters a plea of guilty to an arson-related offense shall be required to register with a registering agency.

(b) Notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant who establishes a primary residence in this state and who enters a plea of guilty to an offense in another state, county or jurisdiction that may result in a conviction of an arson-related offense shall be required to register with a registering agency.

(c) This part shall apply to arson offenders who received diversion under § 40-35-313 or its equivalent in any other jurisdiction.

SECTION 2. Tennessee Code Annotated, Section 39-16-702(b), is amended by adding the following as a new subdivision:

(4) Perjury committed on an arson offender TBI registration form under title 40, chapter 21, is a Class E felony. Each TBI registration form shall clearly state in bold face type directly above the signature line that an applicant who, with the intent to deceive, makes any false statement on the application is guilty of the felony offense of perjury.

SECTION 3. This act shall take effect July 1, 2014, the public welfare requiring it.